IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15278 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARANBHAI KESHAVJI RATHOD - Petitioner(s)
Versus
DHIRAJLAL PRAQGJIBHAI PITRODA & 2 - Respondent(s)

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Appearance :

MR VM PANCHOLI for Petitioner(s) : 1,

Respondent No.1 – deleted.
MR KL PANDYA AGP for Respondent(s) : 2 and 3.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 17/08/2006

ORAL JUDGMENT

1. Leave to delete respondent No.1.

2. **Rule.** Mr. KL Pandya, learned AGP appears and waives service of notice of Rule on behalf of respondent Nos.2 and 3.

3. By filing instant petition under Article 227 of the Constitution of India, the petitioner challenges the order dated 15.4.2006 recorded below application Ex.5 in Special Civil suit No.27 of 2005 by the learned Senior Civil Judge, Morbi, District Rajkot by which the application filed by the petitioner claiming exemption from payment of court fees on the basis of the notification dated 6.4.2005 issued by the State Government granting exemption to earthquake affected people, has been rejected.

4. Having heard Mr. Vipul M. Pancholi, learned advocate of the petitioner and Mr. KL Pandya, learned AGP for respondent Nos.2 and 3 and having perused the application Ex.5 filed by the petitioner and the order passed therein, it is seen that the said application is rejected only

on the ground that the petitioner has not produced certificate of the Mamlatdar together with his affidavit. Mr. Vipul Pancholi, learned advocate of the petitioner, states that now he is having certificate issued by the Mamlatdar as well as the notification issued by the Government granting exemption from payment of court fees to the people of earthquake affected area, he will file fresh application before the learned Senior Civil Judge, Morbi within a period of two weeks hereof. He therefore prays to issue appropriate direction to the concerned Judge to entertain the application and to decide the same in accordance with law.

5. Mr. KL Pandya, learned AGP appearing for respondent Nos.2 and 3, also states that the prayer made by Mr. Pancholi, learned advoate of the petitioner may be accepted by issuing necessary direction to the Senior Civil Judge, Morbi.

6. Seen in the above context, the petition deserves to be allowed by quashing and setting aside the impugned order.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The impugned order dated 15.4.2006 recorded below application Ex.5 in Special Civil Suit No.27 of 2005 by the learned Senior Civil Judge, Morbi, District Rajkot is hereby quashed and set aside.

The petitioner is permitted to file fresh application within two weeks hereof claiming exemption from payment of court fees by producing certificate issued by the Mamlatdar and the notification dated 6.4.2005 issued by the Government granting exemption from the payment of court fees to the people of earthquake affected area. The learned Senior Civil Judge, Morbi shall consider the application in its proper perspective and shall decide the same in accordance with law at the earliest.

Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(A.M. Kapadia, J.)

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